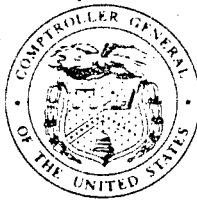


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198392

DATE: November 28, 1980

MATTER OF: Frank A. Alfano - *[Claim For]* Retroactive Temporary
Promotion and Backpay

DIGEST: Employee claims retroactive promotion and backpay on basis of our Turner-Caldwell decisions for performing higher level duties. Claim is denied since employee has failed to meet burden of proof to support claim that he was detailed to and performed the duties of a higher grade position.

By a letter dated March 5, 1980, Mr. Frank A. Alfano appealed our Claims Division's December 12, 1979 disallowance of his claim for a retroactive temporary promotion and backpay from May 21, 1972, through April 29, 1978. For the reasons set forth herein we affirm the disallowance of Mr. Alfano's claim.

Mr. Alfano's claim was first received in the General Accounting Office on May 30, 1978. Therefore, that portion of the claim which accrued prior to May 30, 1972, is barred by the act of October 9, 1940, 54 Stat. 1061, as amended, 31 U.S.C. § 71a (1976), which provides that any claim not received in the General Accounting Office within 6 years after the date the claim accrued is barred from consideration. Although Mr. Alfano did not appeal that portion of his claim which was disallowed on the basis of the act of October 9, 1940, for the record we note that the action taken by the Claims Division in this matter was correct.

Mr. Alfano claims a retroactive temporary promotion and backpay on the basis that he performed the duties of a GS-12 engineer position from May 21, 1972, through April 29, 1978, while appointed to a GS-11 engineer position at the U.S. Army Armament Research and Development Command, Picatinny Arsenal, New Jersey. In support of his claim Mr. Alfano provides the following documentation: (1) a career appraisal form dated in September of 1971 which includes the statement that he had demonstrated his ability to perform at the GS-12 level and recommended his promotion to GS-12, (2) a career appraisal form signed by Mr. Alfano in October 1972 which states that

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"during the past year" he "worked as the Project Engineer on a nuclear projectile system, a position which is normally filled by a GS-12 engineer," (3) the statements of a coworker and a person who supervised him for the period 1971-1972, indicating that from 1971 until 1974, Mr. Alfano "performed the duties of a GS-12 level engineer," and (4) temporary promotions to a GS-12 engineer position at various times between May 30, 1976, and March 19, 1977.

Mr. Alfano's claim was denied by his agency and by the Claims Division on the basis (1) that he did not show that he had performed the duties of a GS-12 position outside the period of his temporary promotion, (2) that his supervisor did not support his claim that he had performed higher grade duties beyond the time of his temporary promotions, and (3) that a desk audit performed in April 1975 found Mr. Alfano to be performing at the GS-11 level.

We have held that where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission (now Office of Personnel Management) approval to extend the detail beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay for the period of the detail in excess of 120 days. Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). As is the case with any claim against the United States, the burden is on the claimant to establish the liability of the United States and the claimant's right to payment. See 4 C.F.R. § 31.7 (1978); Walter D. Corder, Jr., B-195023, August 21, 1979. With regard to what constitutes acceptable proof of a detail, Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, states that acceptable documentation includes official personnel documents or official memoranda, as well as written statements from supervisors or other management officials who were familiar with the employee's work. However, we pointed out in William A. Belvin, B-195557, January 8, 1980, that while the understanding of coworkers and subordinates as to the nature of an employee's duties may be corroborative evidence of a detail, such evidence by itself generally is insufficient to document a detail.

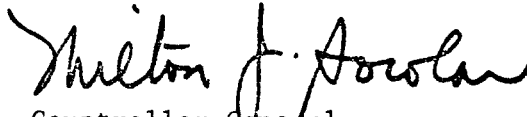
In his appeal Mr. Alfano again contends that he performed the duties of a GS-12 position and points out that FPM Bulletin 300-40 permits documentation of an employee's detail through

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the written statements of an employee's supervisor or other management official familiar with his work. He further contends that his claim file contains such documentation. However, the statement referred to by Mr. Alfano is that of a coworker who only supervised Mr. Alfano during a 1-year period, 1971-1972. While this individual's statement is consistent with the indication on Mr. Alfano's career appraisal for 1972 that he worked as a project engineer during the "past year," Mr. Alfano's supervisor for the period of the claim has not supported his contention that he performed the duties of a GS-12 position.

The evidence in this case is not sufficient to establish that Mr. Alfano did in fact perform the duties of the higher grade position outside the time of his temporary promotion. While he has submitted statements from fellow employees that he performed higher grade duties, these statements alone are insufficient in light of the statements by his agency to the contrary. Therefore, we conclude that Mr. Alfano has not met his burden of establishing the liability of the United States and his right to payment as provided in 4 C.F.R. § 31.7. See Corder, supra.

Accordingly, we must sustain the settlement of our Claims Division denying Mr. Alfano's claim for a retroactive promotion and backpay.


For the Comptroller General
of the United States